

Exhibit

3



Joel B. Rothman

Board Certified in Intellectual Property Law

Direct: 561.404.4335

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October 15, 2020

VIA EMAIL: rj@pregame.com

Mr. RJ Bell
Pregame LLC
3230 East Flamingo Road
Suite 415
Las Vegas, NV 89121

Re: Eclipse Sportswire v. Pregame LLC
Our File No.: 00687-0010

Dear Mr. Bell,

We are a law firm making a claim on behalf of our client. We know that this is reaching you during a difficult and trying time and that you may have more pressing concerns. We appreciate that responding to this letter may not be your first priority. However, we must receive a response from you so that we know that you are taking this matter seriously, even if you need more time to hire a lawyer or report this claim to your insurance carrier. If we hear from you then we can work with you to understand your position and resolve our client's claim. Please respond to us.

We write on behalf of our client Eclipse Sportswire, a photograph licensing agent, for purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Please provide this letter to your general liability insurance carriers or other providers of insurance that may cover this claim.

Eclipse Sportswire ("Eclipse")

Eclipse is known for their worldwide cover of editorial photography, in sports mainly specializing in horses. Since 2009, Eclipse has photographed in every major thoroughbred horse race across the United States. Eclipse has also covered other major photography events, such as the Rolex Championship. Eclipse has received numerous awards for their unique photo captures, such as winning first place in the 2010 Equine Ideal Photo Contest, second place in the 2010 Thoroughbred Blogger's Alliance, and received the 2009 Jerry Fruttkoff Preakness award etc. Eclipse has also been featured

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Mr. RJ Bell
Pregame LLC
October 15, 2020
Page 2

in/on major name magazines including but not limited to, Sports Illustrated, Chronical of the Horse, and Speechless Times.

Eclipse retains all copyrights to its photographs. Eclipse licenses its copyrighted Works, such as the one in this case, for commercial use.

Scott Serio created the image, hereinafter referred to as the "Work."

The Work at issue is shown below.



Serio registered the Work with the Register of Copyrights on June 22, 2017 and was assigned the registration number VA 2-056-099, a copy of which is enclosed.

Infringement by Pregame LLC ("Pregame")

We have enclosed contemporaneous evidence of the infringement by Pregame. In addition to the infringement, Eclipse's photograph was very obviously cropped as shown on the attached. You have employed our client's Work in at least the manner indicated in the evidence attached. You are fully aware that the Work you used is our client's Work. No one from your company ever sought a license from our client to use the Work for any purpose.

You have copied, displayed and distributed our client's Work without permission, license or consent. The use of a creator's photographic image without written consent or license violates the United States Code, Title 17, and The Copyright Act. The Copyright

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Mr. RJ Bell
Pregame LLC
October 15, 2020
Page 3

Act provides for entry of an injunction directing removal of the offending materials pending litigation. This letter shall serve as formal notice that you immediately cease and desist all unauthorized uses of our client's Work. Any such further uses shall be at your peril.

If you possess a contract, license, agreement or writing on which you will rely for authorization of your use of our client's Work, please provide us with this evidence so we may avoid further controversy or litigation. Otherwise, we will be forced to assume that your use violated the law.

Damages

Copyright law provides several different elements of compensation to Eclipse when a work is infringed or altered. Section 504 permits Eclipse to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages," or statutory damages of up to \$150,000 per work infringed if the registration predated the infringement. Eclipse can present both damages theories to the jury and select the higher award any time prior to entry of judgment.

Academic studies have demonstrated that the use of good quality photographs more effectively market and advertise products and drive sales. Eclipse's photographs are of the highest quality. Eclipse's photographs are also scarce since it is one of the only sources of such quality photographs.

Eclipse's damages are not limited to what it would have agreed to license the Work for prior to the infringement. Rather, Eclipse's actual damages will be measured by the fair market value of the photograph considering Pregame's use to sell and promote its business. Eclipse's actual damages must be measured in light of Pregame's use of Eclipse's high quality and unique Work.

This is consistent with federal courts' approach to broadly construing the term "actual damages" to favor victims of infringement. See, e.g., *Davis v. Gap, Inc.*, 246 F.3d 152, 164 (2d Cir. 2001). The fair market value approach for calculating damages is an accepted approach to valuing the defendants' uses of photographs. See *Leonard v. Stemtech Int'l, Inc.*, Nos. 15-3198, 15-3247, 2016 U.S. App. LEXIS 15565 (3d Cir. Aug. 24, 2016). In addition, Eclipse can offer evidence of the actual cost to take the photograph infringed on a time and materials basis.

Section 504 of the Copyright Act permits Eclipse to recover actual damages plus "any additional profits of the infringer that are attributable to the infringement and are not

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Mr. RJ Bell
Pregame LLC
October 15, 2020
Page 4

taken into account in computing the actual damages.” Therefore, Eclipse will also be entitled to Pregame’s profits from the infringement, based upon the revenue Pregame earned in connection with the use of Eclipse’s Work.

Alternatively, Eclipse could seek statutory damages for infringement in an amount of up to \$30,000 per work infringed if the registration predated the infringement. There is also the possibility that a judge or jury could determine that Pregame’s infringement was willful. If Pregame’s infringement was shown to be willful, the statutory damage award would increase to an amount up to \$150,000 per work infringed.

Demand

In order to determine how to proceed, please provide us with information and documents showing:

1. the full nature and extent of the use of our client's Work, in any and all formats;
2. representative copies in any and all tangible form and media in which our client's Work was incorporated or employed; and
3. the source of the Work.

Upon receipt of this information we will consider and determine an appropriate amount required to be paid to our client in compensation.

Please carefully consider this letter and the associated exhibits and provide them to your attorneys and insurance carriers. If we do not receive a response from you or a representative by October 29, 2020, we will take further steps to protect our client’s rights.

We look forward to your prompt response.

Sincerely,

SRIPLAW



Joel B. Rothman

JBR/jmb
Enclosures

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Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Karen Leigh Clayette

Acting United States Register of Copyrights and Director

Registration Number

VA 2-056-099

Effective Date of Registration:

June 22, 2017

Title

Title of Work: Group Registration Photos, ScottSerio2017, Published Feb. 04, 2017 to Jun. 10, 2017; 711 photos.

Content Title: z170204_eclipsesportswire_sgs_00529, z170204_eclipsesportswire_sgs_00534, z170204_eclipsesportswire_sgs_00550, z170204_eclipsesportswire_sgs_00801, z170204_eclipsesportswire_sgs_01571, z170204_eclipsesportswire_sgs_01572, z170204_eclipsesportswire_sgs_00143_1, z170204_eclipsesportswire_sgs_00143, z170204_eclipsesportswire_sgs_00169, z170204_eclipsesportswire_sgs_00178, z170204_eclipsesportswire_sgs_00222, z170204_eclipsesportswire_sgs_00229, z170204_eclipsesportswire_sgs_00270, z170204_eclipsesportswire_sgs_00491, z170204_eclipsesportswire_sgs_00492, z170204_eclipsesportswire_sgs_00501, z170204_eclipsesportswire_sgs_00520 (published February 04, 2017); z170407_eclipsesportswire_sgs_00176, z170407_eclipsesportswire_sgs_00230, z170407_eclipsesportswire_sgs_00260, z170407_eclipsesportswire_sgs_00289, z170407_eclipsesportswire_sgs_00392, z170407_eclipsesportswire_sgs_00398, z170407_eclipsesportswire_sgs_00405, z170407_eclipsesportswire_sgs_00454, z170407_eclipsesportswire_sgs_00461, z170407_eclipsesportswire_sgs_00468, z170407_eclipsesportswire_sgs_00470, z170407_eclipsesportswire_sgs_00476, z170407_eclipsesportswire_sgs_00490, z170407_eclipsesportswire_sgs_00493, z170407_eclipsesportswire_sgs_00006, z170407_eclipsesportswire_sgs_00038, z170407_eclipsesportswire_sgs_00043, z170407_eclipsesportswire_sgs_00049, z170407_eclipsesportswire_sgs_00055, z170407_eclipsesportswire_sgs_00078, z170407_eclipsesportswire_sgs_00090, z170407_eclipsesportswire_sgs_00098, z170407_eclipsesportswire_sgs_00118, z170407_eclipsesportswire_sgs_00145, z170407_eclipsesportswire_sgs_00159 (published April 07, 2017); z170408_eclipsesportswire_sgs_00734, z170408_eclipsesportswire_sgs_00740, z170408_eclipsesportswire_sgs_00827, z170408_eclipsesportswire_sgs_00858, z170408_eclipsesportswire_sgs_00891, z170408_eclipsesportswire_sgs_01154, z170408_eclipsesportswire_sgs_01155 (published April 08, 2017).

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 (published May 03, 2017).

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 z170504_eclipsesportswire_sgs_00252_1,
 z170504_eclipsesportswire_sgs_00276_1,
 z170504_eclipsesportswire_sgs_00347_1,
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 z170505_eclipsesportswire_sgs_03669, z170505_eclipsesportswire_sgs_03673,
 z170505_eclipsesportswire_sgs_03670 (published May 05, 2017);
 z170506_eclipsesportswire_sgs_00244_1,
 z170506_eclipsesportswire_sgs_00132, z170506_eclipsesportswire_sgs_00134,
 z170506_eclipsesportswire_sgs_00139, z170506_eclipsesportswire_sgs_00141,
 z170506_eclipsesportswire_sgs_00142, z170506_eclipsesportswire_sgs_00145,
 z170506_eclipsesportswire_sgs_00148, z170506_eclipsesportswire_sgs_00151,
 z170506_eclipsesportswire_sgs_00155, z170506_eclipsesportswire_sgs_00156,
 z170506_eclipsesportswire_sgs_00157, z170506_eclipsesportswire_sgs_00159,
 z170506_eclipsesportswire_sgs_00161, z170506_eclipsesportswire_sgs_00162,
 z170506_eclipsesportswire_sgs_00166, z170506_eclipsesportswire_sgs_00167,
 z170506_eclipsesportswire_sgs_00169, z170506_eclipsesportswire_sgs_00172,
 z170506_eclipsesportswire_sgs_00179, z170506_eclipsesportswire_sgs_00180
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z170506_eclipsesportswire_sgs_00182, z170506_eclipsesportswire_sgs_00184,
 z170506_eclipsesportswire_sgs_00187, z170506_eclipsesportswire_sgs_00197,
 z170506_eclipsesportswire_sgs_00198,
 z170506_eclipsesportswire_sgs_00220_1,
 z170506_eclipsesportswire_sgs_00222_1,



z170506_eclipsesportswire_sgs_00227_1,
z170506_eclipsesportswire_sgs_00232_1,
z170506_eclipsesportswire_sgs_00236_1,
z170506_eclipsesportswire_sgs_00237_1,
z170506_eclipsesportswire_sgs_00238_1,
z170506_eclipsesportswire_sgs_00241, z_SSD5129,
z170506_eclipsesportswire_sgs_00248_1,
z170506_eclipsesportswire_sgs_02055, z170506_eclipsesportswire_sgs_02412,
z170506_eclipsesportswire_sgs_02760_1,
z170506_eclipsesportswire_sgs_02761, z170506_eclipsesportswire_sgs_02764,
z170506_eclipsesportswire_sgs_02765, z170506_eclipsesportswire_sgs_02767,
z170506_eclipsesportswire_sgs_02768, z170506_eclipsesportswire_sgs_02774
(published May 06, 2017); z170512_eclipsesportswire_sgs_00046,
z170512_eclipsesportswire_sgs_00067, z170512_eclipsesportswire_sgs_00070,
z170512_eclipsesportswire_sgs_00145, z170512_eclipsesportswire_sgs_00150,
z170512_eclipsesportswire_sgs_00166, z170512_eclipsesportswire_sgs_00201,
z170512_eclipsesportswire_sgs_00229, z170512_eclipsesportswire_sgs_00234,
z170512_eclipsesportswire_sgs_00259, z170512_eclipsesportswire_sgs_00295,
z170512_eclipsesportswire_sgs_00331, z170512_eclipsesportswire_sgs_00352,
z170512_eclipsesportswire_sgs_00395, z170512_eclipsesportswire_sgs_00413,
z170512_eclipsesportswire_sgs_00421, z170512_eclipsesportswire_sgs_00700,
z170512_eclipsesportswire_sgs_00705, z170512_eclipsesportswire_sgs_00715,
z170512_eclipsesportswire_sgs_00786, z170512_eclipsesportswire_sgs_00795,
z170512_eclipsesportswire_sgs_00886, z170512_eclipsesportswire_sgs_00976
(published May 12, 2017); z170514_eclipsesportswire_sgs_00129_1,
z170514_eclipsesportswire_sgs_00129 (published May 14, 2017).

z170514_eclipsesportswire_sgs_00136_1,
z170514_eclipsesportswire_sgs_00136,
z170514_eclipsesportswire_sgs_00160_1,
z170514_eclipsesportswire_sgs_00160,
z170514_eclipsesportswire_sgs_00174_1,
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z170514_eclipsesportswire_sgs_00228_1,
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z170514_eclipsesportswire_sgs_00381,
z170514_eclipsesportswire_sgs_00384_1,
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z170514_eclipsesportswire_sgs_00419_1,
z170514_eclipsesportswire_sgs_00419,
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z170514_eclipsesportswire_sgs_00555_1,
z170514_eclipsesportswire_sgs_00555,
z170514_eclipsesportswire_sgs_00563_1,
z170514_eclipsesportswire_sgs_00563,
z170514_eclipsesportswire_sns_00104_1,
z170514_eclipsesportswire_sns_00108_1 (published May 14, 2017);

z170515_eclipsesportswire_sgs_00102, z170515_eclipsesportswire_sgs_00117,
 z170515_eclipsesportswire_sgs_00121, z170515_eclipsesportswire_sgs_00123,
 z170515_eclipsesportswire_sgs_00133, z170515_eclipsesportswire_sgs_00175,
 z170515_eclipsesportswire_sgs_00181, z170515_eclipsesportswire_sgs_00189,
 z170515_eclipsesportswire_sgs_00210, z170515_eclipsesportswire_sgs_00256,
 z170515_eclipsesportswire_sgs_00298, z170515_eclipsesportswire_sgs_00347,
 z170515_eclipsesportswire_sgs_00356,
 z170515_eclipsesportswire_sgs_00425_1,
 z170515_eclipsesportswire_sgs_00636, z170515_eclipsesportswire_sgs_00736
 (published May 15, 2017); z170517_eclipsesportswire_sgs_00018 (published
 May 18, 2017).

z170517_eclipsesportswire_sgs_00030, z170517_eclipsesportswire_sgs_00039,
 z170517_eclipsesportswire_sgs_00048, z170517_eclipsesportswire_sgs_00071,
 z170517_eclipsesportswire_sgs_00107, z170517_eclipsesportswire_sgs_00110,
 z170517_eclipsesportswire_sgs_00137, z170517_eclipsesportswire_sgs_00321,
 z170517_eclipsesportswire_sgs_00337, z170517_eclipsesportswire_sgs_00383,
 z170517_eclipsesportswire_sgs_00410, z170517_eclipsesportswire_sgs_00429,
 z170517_eclipsesportswire_sgs_00501, z170517_eclipsesportswire_sgs_00505,
 z170517_eclipsesportswire_sgs_00557, z170517_eclipsesportswire_sgs_00610,
 z170517_eclipsesportswire_sgs_00622, z170517_eclipsesportswire_sgs_00720,
 z170517_eclipsesportswire_sgs_00772, z170517_eclipsesportswire_sgs_00924,
 z170517_eclipsesportswire_sgs_00964, z170517_eclipsesportswire_sgs_01019,
 z170517_eclipsesportswire_sgs_01031, z170517_eclipsesportswire_sgs_01083,
 z170517_eclipsesportswire_sgs_01110, z170517_eclipsesportswire_sgs_01246,
 z170517_eclipsesportswire_sgs_01322, z170517_eclipsesportswire_sgs_01473,
 z170517_eclipsesportswire_sgs_01498, z170517_eclipsesportswire_sgs_01535,
 z170517_eclipsesportswire_sgs_01674, z170518_eclipsesportswire_sgs_00003,
 z170518_eclipsesportswire_sgs_00011, z170518_eclipsesportswire_sgs_00014,
 z170518_eclipsesportswire_sgs_00022, z170518_eclipsesportswire_sgs_00026,
 z170518_eclipsesportswire_sgs_00029,
 z170518_eclipsesportswire_sgs_00040_1,
 z170518_eclipsesportswire_sgs_00040, z170518_eclipsesportswire_sgs_00044,
 z170518_eclipsesportswire_sgs_00049, z170518_eclipsesportswire_sgs_00051,
 z170518_eclipsesportswire_sgs_00053, z170518_eclipsesportswire_sgs_00058,
 z170518_eclipsesportswire_sgs_00065, z170518_eclipsesportswire_sgs_00068,
 z170518_eclipsesportswire_sgs_00072, z170518_eclipsesportswire_sgs_00075,
 z170518_eclipsesportswire_sgs_00076, z170518_eclipsesportswire_sgs_00077
 (published May 18, 2017).

z170518_eclipsesportswire_sgs_00084, z170518_eclipsesportswire_sgs_00087,
 z170518_eclipsesportswire_sgs_00090, z170518_eclipsesportswire_sgs_00093,
 z170518_eclipsesportswire_sgs_00098, z170518_eclipsesportswire_sgs_00101,
 z170518_eclipsesportswire_sgs_00113, z170518_eclipsesportswire_sgs_00121,
 z170518_eclipsesportswire_sgs_00134, z170518_eclipsesportswire_sgs_00137,
 z170518_eclipsesportswire_sgs_00142, z170518_eclipsesportswire_sgs_00144,
 z170518_eclipsesportswire_sgs_00147, z170518_eclipsesportswire_sgs_00150,
 z170518_eclipsesportswire_sgs_00154, z170518_eclipsesportswire_sgs_00164
 (published May 18, 2017); z170519_eclipsesportswire_sgs_00086,
 z170519_eclipsesportswire_sgs_00091, z170519_eclipsesportswire_sgs_00100,
 z170519_eclipsesportswire_sgs_00371, z170519_eclipsesportswire_sgs_00378,
 z170519_eclipsesportswire_sgs_00390, z170519_eclipsesportswire_sgs_00445,
 z170519_eclipsesportswire_sgs_00478, z170519_eclipsesportswire_sgs_00490,
 z170519_eclipsesportswire_sgs_00506, z170519_eclipsesportswire_sgs_00521,
 z170519_eclipsesportswire_sgs_00539, z170519_eclipsesportswire_sgs_00556,
 z170519_eclipsesportswire_sgs_00594, z170519_eclipsesportswire_sgs_00602,
 z170519_eclipsesportswire_sgs_00613, z170519_eclipsesportswire_sgs_00635,
 z170519_eclipsesportswire_sgs_00674, z170519_eclipsesportswire_sgs_00707,



z170519_eclipsesportswire_sgs_00736, z170519_eclipsesportswire_sgs_00785,
 z170519_eclipsesportswire_sgs_00834, z170519_eclipsesportswire_sgs_00842,
 z170519_eclipsesportswire_sgs_08205, z170519_eclipsesportswire_sgs_08209,
 z170519_eclipsesportswire_sgs_08263, z170519_eclipsesportswire_sgs_08270,
 z170519_eclipsesportswire_sgs_08271, z170519_eclipsesportswire_sgs_08272,
 z170519_eclipsesportswire_sgs_08273, z170519_eclipsesportswire_sgs_08316,
 z170519_eclipsesportswire_sgs_08322, z170519_eclipsesportswire_sgs_08324
 (published May 19, 2017).

z170520_eclipsesportswire_sgs_00027, z170520_eclipsesportswire_sgs_00028,
 z170520_eclipsesportswire_sgs_00031, z170520_eclipsesportswire_sgs_00033,
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 z170520_eclipsesportswire_sgs_00101, z170520_eclipsesportswire_sgs_00106,
 z170520_eclipsesportswire_sgs_00107, z170520_eclipsesportswire_sgs_00108,
 z170520_eclipsesportswire_sgs_00110, z170520_eclipsesportswire_sgs_00112,
 z170520_eclipsesportswire_sgs_00115,
 z170520_eclipsesportswire_sgs_00123_1,
 z170520_eclipsesportswire_sgs_00123, z170520_eclipsesportswire_sgs_00211,
 z170520_eclipsesportswire_sgs_00214, z170520_eclipsesportswire_sgs_00215,
 z170520_eclipsesportswire_sgs_00224, z170520_eclipsesportswire_sgs_00235,
 z170520_eclipsesportswire_sgs_00238, z170520_eclipsesportswire_sgs_00239,
 z170520_eclipsesportswire_sgs_00242, z170520_eclipsesportswire_sgs_00245,
 z170520_eclipsesportswire_sgs_00249, z170520_eclipsesportswire_sgs_00252,
 z170520_eclipsesportswire_sgs_00253_1,
 z170520_eclipsesportswire_sgs_00255, z170520_eclipsesportswire_sgs_00256,
 z170520_eclipsesportswire_sgs_00259, z170520_eclipsesportswire_sgs_00261,
 z170520_eclipsesportswire_sgs_00262, z170520_eclipsesportswire_sgs_00263,
 z170520_eclipsesportswire_sgs_00302 (published May 20, 2017).

z170520_eclipsesportswire_sgs_00447, z170520_eclipsesportswire_sgs_00448,
 z170520_eclipsesportswire_sgs_00467, z170520_eclipsesportswire_sgs_00470,
 z170520_eclipsesportswire_sgs_00474, z170520_eclipsesportswire_sgs_00475,
 z170520_eclipsesportswire_sgs_00628, z170520_eclipsesportswire_sgs_00629,
 z170520_eclipsesportswire_sgs_00634, z170520_eclipsesportswire_sgs_00638,
 z170520_eclipsesportswire_sgs_00643, z170520_eclipsesportswire_sgs_00651,
 z170520_eclipsesportswire_sgs_00653, z170520_eclipsesportswire_sgs_00827,
 z170520_eclipsesportswire_sgs_00828, z170520_eclipsesportswire_sgs_00833,
 z170520_eclipsesportswire_sgs_00898, z170520_eclipsesportswire_sgs_00899,
 z170520_eclipsesportswire_sgs_00900, zDSC_0304, zDSC_0306, zimage3
 (published May 20, 2017); zz170609_eclipsesportswire_sgs_00033,
 zz170609_eclipsesportswire_sgs_00057,
 zz170609_eclipsesportswire_sgs_00888,
 zz170609_eclipsesportswire_sgs_01006_1,
 zz170609_eclipsesportswire_sgs_01165,
 zz170609_eclipsesportswire_sgs_01200,
 zz170609_eclipsesportswire_sgs_01222,
 zz170609_eclipsesportswire_sgs_01318,
 zz170609_eclipsesportswire_sgs_01333,
 zz170609_eclipsesportswire_sgs_01368,
 zz170609_eclipsesportswire_sgs_01402,

zz170609_eclipsesportswire_sgs_01510,
zz170609_eclipsesportswire_sgs_01561,
zz170609_eclipsesportswire_sgs_01567,
zz170609_eclipsesportswire_sgs_01626,
zz170609_eclipsesportswire_sgs_01650,
zz170609_eclipsesportswire_sgs_01673,
zz170609_eclipsesportswire_sgs_02160,
zz170609_eclipsesportswire_sgs_02261,
zz170609_eclipsesportswire_sgs_02342,
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zz170610_eclipsesportswire_sgs_00015,
zz170610_eclipsesportswire_sgs_00048,
zz170610_eclipsesportswire_sgs_00076 (published June 10, 2017).

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zz170610_eclipsesportswire_sgs_00133,
zz170610_eclipsesportswire_sgs_00158,
zz170610_eclipsesportswire_sgs_00187,
zz170610_eclipsesportswire_sgs_00196,
zz170610_eclipsesportswire_sgs_00214,
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zz170610_eclipsesportswire_sgs_00248,
zz170610_eclipsesportswire_sgs_00253,
zz170610_eclipsesportswire_sgs_00256,
zz170610_eclipsesportswire_sgs_00281,
zz170610_eclipsesportswire_sgs_00299,
zz170610_eclipsesportswire_sgs_00307,
zz170610_eclipsesportswire_sgs_00322,
zz170610_eclipsesportswire_sgs_00332,
zz170610_eclipsesportswire_sgs_00346,
zz170610_eclipsesportswire_sgs_00352,
zz170610_eclipsesportswire_sgs_00362,
zz170610_eclipsesportswire_sgs_00364,
zz170610_eclipsesportswire_sgs_00388,
zz170610_eclipsesportswire_sgs_00443,
zz170610_eclipsesportswire_sgs_00449,
zz170610_eclipsesportswire_sgs_00481,
zz170610_eclipsesportswire_sgs_00510,
zz170610_eclipsesportswire_sgs_00517,
zz170610_eclipsesportswire_sgs_00525,
zz170610_eclipsesportswire_sgs_00564,
zz170610_eclipsesportswire_sgs_00574,
zz170610_eclipsesportswire_sgs_00589,
zz170610_eclipsesportswire_sgs_00595,
zz170610_eclipsesportswire_sgs_00685,
zz170610_eclipsesportswire_sgs_00714,
zz170610_eclipsesportswire_sgs_00766,
zz170610_eclipsesportswire_sgs_01348,
zz170610_eclipsesportswire_sgs_01367,
zz170610_eclipsesportswire_sgs_01369,
zz170610_eclipsesportswire_sgs_01389,



zz170610_eclipsesportswire_sgs_01399,
zz170610_eclipsesportswire_sgs_01408,
zz170610_eclipsesportswire_sgs_01434,
zz170610_eclipsesportswire_sgs_01496,
zz170610_eclipsesportswire_sgs_01500,
zz170610_eclipsesportswire_sgs_01783,
zz170610_eclipsesportswire_sgs_01809,
zz170610_eclipsesportswire_sgs_01829,
zz170610_eclipsesportswire_sgs_01848,
zz170610_eclipsesportswire_sgs_01914 (published June 10, 2017).

zz170610_eclipsesportswire_sgs_01991,
zz170610_eclipsesportswire_sgs_02017,
zz170610_eclipsesportswire_sgs_02023,
zz170610_eclipsesportswire_sgs_02032_1,
zz170610_eclipsesportswire_sgs_02054,
zz170610_eclipsesportswire_sgs_02137,
zz170610_eclipsesportswire_sgs_02154,
zz170610_eclipsesportswire_sgs_02156,
zz170610_eclipsesportswire_sgs_02180,
zz170610_eclipsesportswire_sgs_02238_1,
zz170610_eclipsesportswire_sgs_02252,
zz170610_eclipsesportswire_sgs_02254,
zz170610_eclipsesportswire_sgs_02260,
zz170610_eclipsesportswire_sgs_02266,
zz170610_eclipsesportswire_sgs_02352,
zz170610_eclipsesportswire_sgs_02395,
zz170610_eclipsesportswire_sgs_02396,
zz170610_eclipsesportswire_sgs_02400,
zz170610_eclipsesportswire_sgs_02401,
zz170610_eclipsesportswire_sgs_02433,
zz170610_eclipsesportswire_sgs_02435,
zz170610_eclipsesportswire_sgs_02466,
zz170610_eclipsesportswire_sgs_02484 (published June 10, 2017).

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This year's Kentucky Derby has a couple of leaders at the front of the pack and then several other horses that seem to be in a large group that are drawing some long odds. Irap is one of the 2017 Kentucky Derby Longshots. The Kentucky Derby will begin at 6:34pm EST Saturday from Churchill Downs in Louisville, Kentucky.

Trainer: Doug F. O'Neill

Jockey: Mario Gutierrez

Morning Line Odds: 20-1

Current Odds: 39-1 ([kentuckyderby.com](#) as of 10:30 a.m. Saturday)

Kentucky Derby Facts

— The biggest "longshot" was in 1913 when Donerail paid out at 91.45-1 odds.

— The highest attendance ever was in 2015 with 170,513 people. Last year there was 167,227 people.

— An "official" Mint Julep at the Kentucky Derby is made with "Early Times" whiskey.

— New York sports columnist Bill Conum coined the phrase "Run for the Roses."

Kentucky Derby Records

Winning Jockey: Both Eddie Arcaro and Bill Hartack have recorded five wins each. For Arcaro you need to travel back to 1938 (final win was in 1952) for his first of five wins and for Hartack back to 1957 (final win was in 1969).

Winning Trainer: Ben A Jones worked together with jockey Eddie Arcaro spanning from 1938 to 1952 and collected a total of six wins at the Kentucky Derby.

Winning Owner: Over a course of 27 years, Calumet Farm had a total of eight Derby wins (1941, 1944, 1948, 1949, 1952, 1957, 1958).

Winning Length: There is a tie between two horses from the 1940s, Whirlaway and Assault. Both captured the Kentucky Derby with a margin of eight lengths (1941 for Whirlaway and 1944 for Assault).

Winning Time: Probably one of the most famous horses in history, Secretariat, is the holder of this record. In 1973 he ran the Derby in 1:59.40 and is the only horse to ever run the 1 1/4 mile race in under two minutes.

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BRANDON WATSON

— Journalist living in West Michigan. Inaugural "Who's The Man" contest winner at Pregame.com.

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Irapi 2017 Kentucky Derby Odds

05/06/2017 7:32 AM · BRANDON WATSON



This year's Kentucky Derby has a couple of leaders at the front of the pack and then several other horses that seem to be in a large group that are drawing some long odds. Irapi is one of the 2017 Kentucky Derby Longshots. The Kentucky Derby will begin at 6:34pm EST Saturday from Churchill Downs in Louisville, Kentucky.

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Joel B. Rothman

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October 30, 2020

VIA EMAIL: rj@pregame.com

Mr. RJ Bell

Pregame LLC

3230 East Flamingo Road

Suite 415

Las Vegas, NV 89121

Re: Eclipse Sportswire v. Pregame LLC

Our File No.: 00687-0010

Dear Mr. Bell,

We are a law firm making a claim on behalf of our client. We know that this is reaching you during a difficult and trying time and that you may have more pressing concerns. We appreciate that responding to this letter may not be your first priority. However, we must receive a response from you so that we know that you are taking this matter seriously, even if you need more time to hire a lawyer or report this claim to your insurance carrier. If we hear from you then we can work with you to understand your position and resolve our client's claim. Please respond to us.

We write this follow up letter on behalf of our client Eclipse Sportswire for the purposes of resolving a case of copyright infringement against you by our client. This demand is privileged from disclosure pursuant to FRE Rule 408.

Enclosed please find our prior letter dated October 15, 2020, wherein we detailed the basis of the copyright infringement claim against you, including the evidence of infringement.

We note that a review of the accused infringing webpage shows that the infringement has not been removed. It is imperative that you respond to us. If we do not hear from you, we will be forced to take further steps to protect our client's rights, including filing

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Los Angeles, CA 90067

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Marietta, GA 30064

FLORIDA

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NEW YORK

125 Maiden Lane
Suite 5C
New York, NY 10038

Mr. RJ Bell
Pregame LLC
October 30, 2020
Page 2

a lawsuit against you. We also repeat our demand that you tender this claim to your insurance carrier.

We look forward to your prompt response.

Sincerely,

SRIPLAW



Joel B. Rothman

JBR/jmb

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